

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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JAMES E. BUCHANAN

v.

FOX, INC. and  
KEVIN JOSEPH VAN TRUMP

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CFTC Docket No. 00-R118

ORDER DENYING INTERLOCUTORY  
REVIEW

James E. Buchanan (“Buchanan”), the complainant in this reparations case, seeks interlocutory review of the Judgment Officer’s order refusing to disqualify himself. Respondents Fox, Inc. (“Fox”), a non-clearing futures commission merchant, and Kevin Joseph Van Trump (“Van Trump”), the account executive at Fox who handled Buchanan’s account, oppose the application, arguing that Buchanan has not pleaded facts supporting his bias claim. For the reasons explained herein, the application is denied.

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Buchanan moved for disqualification, arguing that the Judgment Officer was biased against him. The Judgment Officer denied the motion without explanation, and Buchanan sought interlocutory review. He argues that the Judgment Officer allowed respondents to submit “fabricated” documents during discovery and otherwise to abuse the discovery process to his detriment. He also contends that statements made by the Judgment Officer during a telephone settlement conference demonstrate bias.

In the absence of extraordinary circumstances, the Commission will not review a ruling of a presiding officer prior to the Commission’s consideration of the entire proceeding on appeal. *See* Rule 12.309(c). This general rule applies to applications for interlocutory review arising

from bias claims as well as from other issues. *See Kelly v. First Investors Group of the Palm Beaches*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,753 at 44,115 (CFTC July 25, 1996); *accord, In re Shahrokh Nikkhah*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,635 (CFTC Mar. 1, 1996).

Disqualification for bias is required if the record establishes that a presiding officer has a personal bias stemming from an extrajudicial source; or a deep-seated favoritism or antagonism that would make a fair judgment impossible. *Liteky v. U. S.*, 510 U.S. 540, 551-55 (1994); *Ferriola v. Kearse-McNeill*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,172 (CFTC June 30, 2000); *Olson v. Ulmer*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,987 (CFTC Jan. 23, 1991). There are no claims of extrajudicial bias; therefore, the second prong of the test applies.

Buchanan's principal allegations of bias stem from his belief that the Judgment Officer and respondents collaborated to deprive him of potentially helpful discovery material. The record does not support his inference that the alleged collaboration occurred in the first place, which precludes a finding that it was motivated by bias.

Buchanan's allegations of bias rest also on his assertion that the Judgment Officer accepted "fabricated" order tickets bearing the facially impossible date stamp of "May 32," and failed to object when respondents did not comply fully with the Judgment Officer's order pursuant to Rule 12.34 (discovery by a Judgment Officer on his own motion).

Buchanan's assertions of bias on these grounds are premature. A presiding officer is not responsible for the quality, integrity and completeness of a litigant's discovery submission under Rule 12.34; what matters is how the presiding officer considers the submission in reaching a

decision. The circumstances enumerated by Buchanan are discernible to the Judgment Officer and may be raised and argued by Buchanan.

Buchanan also contends that, during the settlement conference, the Judgment Officer warned him of the possibility of an adverse ruling and “encouraged the Respondent’s attorney to confirm his intent to sue for legal costs.” Motion for Disqualification at 3.<sup>1</sup> Such statements, standing alone, do not raise automatically an inference of bias, and Buchanan has not shown that the circumstances of this case require a different conclusion.<sup>2</sup>

The record does not demonstrate pervasive bias on the part of the Judgment Officer amounting to extraordinary circumstances that would warrant the Commission’s intervention in this case at this point. Complainant’s application for interlocutory review is denied.<sup>3</sup>

IT IS SO ORDERED.

By the Commission (Acting Chairman NEWSOME and Commissioners HOLUM, SPEARS, and ERICKSON).

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Jean A. Webb  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: November 27, 2001

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<sup>1</sup> Buchanan’s Application incorporates by reference the arguments raised in his Motion for Disqualification.

<sup>2</sup> A Judgment Officer appropriately may apprise a *pro se* complainant of litigation risks, including the risk of liability for respondents’ attorneys’ fees. *See Davis v. Carr*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,916 (CFTC Dec. 10, 1996); *see also Pal v. Reifler Trading Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,237 (CFTC Feb. 2, 1998).

<sup>3</sup> Complainant may reargue his bias claims in the event he should choose to appeal from the initial decision of the Judgment Officer.